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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RHONDA L. CHILDRESS, WARD K. HAROLD,
DAVID BRUCE KUMHYR, and NEIL RAYMOND PENNELL

Appeal 2008-004883
Application 10/809,584
Technology Center 2100

Decided: August 28, 2009

Before JEAN R. HOMERE, JOHN A JEFFERY, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

Appellants' invention relates generally to computer system management. More particularly, the invention on appeal relates to routing system management information to an intended recipient based on presence awareness or the availability of the intended recipient. (Spec. 1).

Claims 1 and 19 are illustrative:

1. A data processing system for routing system management information, comprising:

a plurality of notification units;

a network coupled to said plurality of notification units, said network operable to determine whether each notification unit of said plurality of notification units is available to receive system management information; and

a plurality of management units coupled to said network, at least one management unit of said plurality of management units configured to perform the steps:

generate said system management information;

determine an identity of an intended recipient for said system management information;

associate said identity with at least one notification unit of said plurality of notification units;

determine whether said at least one notification unit is available to receive said system management information; and

send said system management information to said at least one notification unit via a notification handler if said at least

one notification unit is available to receive said system management information.

19. A computer program product in a computer-readable medium for routing system management information, the computer program product comprising:

first instructions for coupling a network to a plurality of notification units;

second instructions for determining whether each notification unit of said plurality of notification units is available to receive system management information;

third instructions for coupling a plurality of management units to said network;

fourth instructions for generating said system management information;

fifth instructions for determining an identity of an intended recipient for said system management information;

sixth instructions for associating said identity with at least one notification unit of said plurality of notification units;

seventh instructions for determining whether said at least one notification unit is available to receive said system management information; and

eighth instructions for converting said system management information into a form that is appropriate for the notification unit.

Prior Art

The Examiner relies on the following reference as evidence:

Holt WO 03/098449 A1 Nov. 27, 2003

The Examiner's Rejections

1. The Examiner rejected claims 19 and 20 under 35 U.S.C. § 101.
2. The Examiner rejected claims 1-20 under 35 U.S.C. §102(a) as anticipated by Holt.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Brief and the Answer for their respective details.

FINDINGS OF FACT

1. Appellants' Specification lists examples of computer readable media as including "transmission-type media, such as digital and analog communications links, wired or wireless communications links using transmission forms, such as, for example, radio frequency and light wave transmissions." (Spec. 16-17).
2. Appellants' Specification describes examples of system management information as including event or notification information. (Spec. 5, ¶ 1, last sentence).
3. Holt discloses that notification server 140 sends a *notification message* to the communication device 150 of User2 to notify User2 of a change of online status of User1. (Para. [0017], emphasis added).

APPELLANTS' CONTENTIONS

1. Appellants contend that claims 19 and 20 are directed to statutory subject matter. (App. Br. 10-12).
2. Appellants contend that the claim term "system management information" should be interpreted as data regarding the occurrence of an event, such as a critical failure of a system component, or notification information relating to a critical failure of a system component. (App. Br. 15).
3. Appellants acknowledge that "Holt teaches a method for providing presence and availability status information of a first user to a second user." (App. Br. 14, ¶ 2). However, Appellants contend that "Holt makes no reference to a duty or obligation by a present and available online user to respond to an incoming message. Holt only teaches that the 'addressee has made himself or herself available to the communication.' Holt, paragraph 0004, lines 3-4." (App. Br. 18).

ISSUES

Based upon our review of the administrative record, we have determined that the following issues are dispositive in this appeal:

1. Have Appellants shown that the Examiner erred in concluding that claims 19 and 20 are directed to non-statutory subject matter?
2. Have Appellants shown that the Examiner erred in finding that Holt discloses "system management information," as claimed? (*See* Representative claim 1).

3. Have Appellants shown that the Examiner erred in finding that Holt discloses that the user has a responsibility for responding to “system management information,” as claimed? (*See* Representative claim 8).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. §101, a computer-readable medium (or media) comprising instructions is directed to statutory subject matter so long as the language of the claims is not supported in the specification with non-statutory embodiments (i.e., signals, transmission mediums and the like). *See In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007) (A claim directed to computer instructions embodied in a signal is not statutory under 35 U.S.C. § 101).

Anticipation

“Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984).

Claim Construction

During patent examination, a claim is given its broadest reasonable construction “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). Therefore, we look to Appellants' Brief to show error in the Examiner's proffered prima facie case.

ANALYSIS

Section 101 rejection of claims 19 and 20

We decide the question of whether Appellants have shown the Examiner erred in concluding that independent claim 19 and dependent claim 20 are directed to non-statutory subject matter. Claims 19 and 20 are directed to a computer-readable medium. (See Claim 19 *supra*).

As stated above, our reviewing court has held that if the language of the claims is supported in the specification with non-statutory embodiments (e.g., signals), the claim is non-statutory. *See In re Nuijten*, 500 F.3d at 1357. We conclude that the scope of the computer-readable medium recited in claims 19 and 20 encompasses transitory signals such as radio frequency and light wave transmissions, as disclosed in Appellants' Specification. (FF 1). Therefore, we conclude that claims 19 and 20 are directed to non-statutory subject matter under 35 U.S.C. § 101.

§ 102 Rejection

GROUPING OF CLAIMS

Appellant argues claims 1-7, 9-16, and 18-20 as a first group and claims 8 and 17 as a second group. We will, therefore, decide the

anticipation rejection based upon representative claims 1 and 8. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Regarding representative claim 1, we decide the question as to whether Holt discloses the claimed “system management information.”

As noted above, Appellants’ Specification describes system management information as including *event or notification information*. (FF 2). We note that system management information is also described in the “Detailed Description” portion of the Specification as including “notification information” (Spec. 14, l. 28). However, Appellants attempt to narrow the construction of “system management information” to data regarding the occurrence of an event, or notification information of a critical failure of a system component, according to a described embodiment of the present invention. (App. Br. 15).

We conclude that the claims allow a broader interpretation. Thus, we broadly but reasonably interpret the claimed “system management information” as encompassing notification information, consistent with Appellants’ Specification. (FF 2). In accordance with this broader claim construction, we adopt the Examiner’s findings regarding the rejection of representative claim 1. (*See* Ans. 5 and 8-9).

Based on the record before us, we find Appellants have not shown error in the Examiner’s rejection of representative claim 1, and claims 2-7, 9-16, and 18-20 that fall therewith. Accordingly, we sustain the Examiner’s rejection of claims 1-7, 9-16, and 18-20 as anticipated by Holt.

§ 102 rejection of claims 8 and 17

We now decide the question of whether Appellants have shown that the Examiner erred in finding that Holt discloses that the user has a responsibility for responding to “system management information,” as claimed. (*See* Representative claim 8).

Appellants contend that “Holt makes no reference to a duty or obligation by a present and available online user to respond to an incoming message. Holt only teaches that the ‘addressee has made himself or herself available to the communication.’ Holt, paragraph 0004, lines 3-4.” (App. Br. 18).

In response, we note that representative claim 8 does not recite a duty or obligation by a present and available online user to respond to an incoming message, as Appellants have attempted to impute by argument. We decline to read these argued limitations into the claims. Moreover, we agree with and adopt the Examiner’s reasoning as set forth on page 11 of the Answer. We also note that no Reply Brief has been filed contesting the Examiner’s persuasive arguments in the Answer (*See* Ans. 11). Therefore, we sustain the Examiner’s rejection of representative claim 8 (and claim 17 that falls therewith) as being anticipated by Holt.

CONCLUSIONS

Appellants have not established the Examiner erred in concluding that claims 19 and 20 are directed to non-statutory subject matter under 35 U.S.C. § 101.

Appellants have not established the Examiner erred in rejecting claims 1-20 as anticipated by Holt.

DECISION

We affirm the Examiner's rejection of claims 19 and 20 under 35 U.S.C. § 101.

We affirm the Examiner's rejection of claims 1-20 under 35 U.S.C. § 102(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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